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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,317	11/14/2003	Gerald J. Tomlinson	25570-48695	2731

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EXAMINER

BECKER, DREW E

ART UNIT PAPER NUMBER

1761

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/714,317

Applicant(s)

TOMLINSON, GERALD J.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it contains two separate paragraphs. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 12 recites "composed of". It is not clear whether this term should be interpreted as a closed term, such as "consisting of", or whether it should be interpreted as an open term, such as "comprised of".

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-2, 4, 8-10, 12-14, 16, 20-24, and 26-27 are rejected under 35 U.S.C. 102(a) as being anticipated by JP 409220068A.

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JP 409220068A teaches a packaged salad comprising a single elongate, cup-like container with an open top (Figure 1b, 1), a lettuce-based salad within the container (Figure 1b, 5; paragraph 0032), a dome-shaped lid atop the container (Figure 1b, 2), the lid volume being about 20% of the container volume (Figure 1b), a liquid salad dressing packet which is mixed with the salad (paragraph 0032), a tight seal between the lid and container (paragraph 0028), sufficient space for tossing within the container and lid (paragraph 0028), and the salad substantially filling the container (Figure 1b).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4, 7-16, and 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tupper [Pat. No. 2,752,971] in view of FR 2299841A.

Tupper teaches a method of making food by providing an elongated container with an open top (Figure 2, #10), shaking the container to mix the foods (Figure 3), a seal-tight lid (Figure 2, A; column 1, line 30), the lid enclosing a volume of about 20% of the vessel's internal volume (Figure 5), the size and shape of the vessel is variable to suit aesthetic and practical requirements (column 2, line 46), solid and liquid foods (column 3, lines 63-66), and the vessel being cylindrical (Figure 2, #10). Tupper does not specifically recite salad and dressing, a hemispherical lid, food above the container, and

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shaking for 5-10 seconds. FR 2299841A teaches a food container comprising salad ingredients which are shaken in order to mix them (page 2, line 1), a hemispherical lid (Figure 1, #1), and the salad inherently reducing its volume after shaking. It would have been obvious to one of ordinary skill in the art to incorporate the salad ingredients of FR 2299841A into the invention of Tupper since both are directed to food containers, since Tupper already teaches the mixing of both solid and liquid foods, and since salad ingredients were commonly packaged together in a mixing container as shown by FR 2299841A. It would have been obvious to one of ordinary skill in the art to fill the container to varying degrees since this have been done during the course of normal experimentation in order to package a proportional quantity of salad components and since consumers desire different sizes for food products based upon how hungry they are at the time. It would have been obvious to one of ordinary skill in the art to shake the container of Tupper for 5-10 seconds since Tupper already included shaking but simply does not recite a specific time period (Figure 3), since this would have been done during the course of normal experimentation, and since shaking for a prolonged period of time would have better ensured proper mixing of the food.

9. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tupper in view of FR 2299841A as applied above, and further in view of Lorence et al [Pat. No. 5,818,016].

Tupper and FR 2299841A teach the above mentioned concepts. Tupper and FR 2299841A do not teach a coating. Lorence et al teach a food container (Figure 7) comprising a Teflon coating (column 3, line 45). It would have been obvious to one of

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ordinary skill in the art to incorporate the Teflon coating of Lorence et al into the invention of Tupper since both are directed to cup shaped food containers, since Tupper already includes the use of both solid and liquid foods in a container with a lid, and since Lorence et al teach that the coating was resistant to moisture (column 1, line 61) which would have extended the effective service life of the container of Tupper by preventing moisture uptake by the container and lid, as well as preventing residue from sticking to the container and lid.

10. Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tupper, in view of FR2299841A, as applied above, and further in view of Atkinson [Pat. No. 5,705,212].

Tupper and FR 2299841A teach the above mentioned concepts. FR 2299841A also teaches a fork (page 1, paragraph c). Tupper and FR 2299841A do not teach a fork which is longer than the height of the container. Atkinson teaches a food container with a fork which is longer than the height of the container (Figure 1, #22; abstract). It would have been obvious to one of ordinary skill in the art to incorporate the long-handled fork of Atkinson into the invention of Tupper, in view of FR 2299841A, since all are directed to food containers, since Tupper already included an elongate container, since FR 2299841A already included a fork (page 1, paragraph c), since long-handled forks were commonly provided for elongate containers as shown by Atkinson (Figure 1, #22), and since a long-handled fork would have prevented the consumer from getting their hands messy while eating the food of Tupper.

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11. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tupper, in view of FR 2299841A, as applied above, and further in view of Cochran et al [pat. No. 5,747,084].

Tupper and FR 2299841A teach the above mentioned concepts. Tupper and FR 2299841A do not recite a packet within the container. Cochran et al teach a food container comprising a sauce packet (Figure 2, #40). It would have been obvious to one of ordinary skill in the art to incorporate the sauce packet of Cochran et al into the invention of Tupper, in view of FR 2299841A, since all are directed to packaged foods, since FR 2299841A already included salad dressing (page 2, line 1), since packets of salad dressing were commonly included with packaged salads, and since supplying the liquid packets within the container, as shown by Cochran et al, would have provided added convenience by supplying a self-contained meal kit.

12. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tupper, in view of FR 2299841A and Cochran et al, as applied above, and further in view of Atkinson.

Tupper, Cochran et al, and FR 2299841A teach the above mentioned concepts. FR 2299841A also teaches a fork (page 1, paragraph c). Tupper, Cochran et al, and FR 2299841A do not teach a fork which is longer than the height of the container. Atkinson teaches a food container with a fork which is longer than the height of the container (Figure 1, #22; abstract). It would have been obvious to one of ordinary skill in the art to incorporate the long-handled fork of Atkinson into the invention of Tupper, in view of Cochran et al and FR 2299841A, since all are directed to food containers, since Tupper

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already included an elongate container, since FR 2299841A already included a fork (page 1, paragraph c), since long-handled forks were commonly provided for elongate containers as shown by Atkinson (Figure 1, #22), and since a long-handled fork would have prevented the consumer from getting their hands messy while eating the food of Tupper.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Keller et al [Pat. No. 3,573,069], LaBaw et al [Pat. No. 4,904,488], and FR 2822139A1 teach methods of making foods by including packets and shaking.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Drew E Becker  
Primary Examiner  
Art Unit 1761

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